Examiner, "Heilman discloses a color change system including a brittle layer 44 formed of a 'flexible material' and being colored with a fluorescent die and a bonding layer 42 that bonds the brittle layer to the background coating 40 ..." (quotations added by Applicant). The Examiner's insertion of "flexible material" into the description of Heilman's brittle layer is unjustified and misleading. There is nothing flexible about the brittle layer of Heilman and, in fact, even with the slightest deformation (apparently of a few millimeters) the brittle layer of Heilman simply cracks up. This is entirely different from Applicants' disclosed backing layer, which may be composed of "plastic such as cellulose-based materials, vinyls, urethanes, polyesters, and the like now currently employed for both opaque and transparent tapes ..." (specification, lines 18-20). Moreover, the "adhesive" of Heilman is more like a hardening cement, preferably in the form of a varnish "bonding layer 42." ('194 patent, column 3, lines 38-44). Accordingly, the Examiner's statement that "the brittle layer of Heilman is simply analogous to the backing layer of the conventional tape whereas the bonding layer of Heilman is comparable to the adhesive layer," runs counter to accepted definitions and interpretation by anyone of skill in the art.

The Examiner concedes that neither the cited art discloses or suggests a phenomenon of internal reflection, but the Examiner seems to take "official notice" that such a limitation would be "inherent." The Examiner bases this reasoning on the presumption that "the adhesive tape of the admitted prior art as modified by Heilman appears to be structurally the same as the adhesive tape of the present invention." This is clearly untrue. The Heilman patent is directed to a closure incorporating an irreversible color system, the closure including a brittle layer 44 which fractures and in part delaminates to indicate tampering. "The brittle layer 44 is formed of a brittle resin and should be a thermal set material that has proper fracturing and adhesion properties in order to work properly." ('194 patent, column 3, lines 45-47). Given that the teachings of Heilman include a brittle structure that cracks up or breaks apart as part of a tamper-evident container, there is no evidence whatsoever that an adhesive tape "modified by Heilman" would be structurally the same as Applicants' invention.

The Examiner points to the last paragraph of page 9 of Applicants' specification, wherein it is disclosed that when a tape is cut or torn, microcapsules of the fluorescent dye within the backing layer are broken ...; however, this is an embodiment of the invention which Applicants' *are not presently claiming*. In Applicants' invention *as claimed*, fluorescent material is included in the backing layer of a flexible, adhesive tape, such that there is no brittle layer that fractures, nor is there an irreversible color

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change.

Group II - Claim 23

Claim 23 adds to claim 20 the limitation that the fluorescent material in the backing material of the tape is a fluorescein dye. In addition to all of the arguments set forth above with regard to the claim from which claim 23 depends, the Examiner makes absolutely no mention of this limitation. It is clear that Heilman is silent as to the fluorescent material used, or at least it is not a fluorescein dye, such that this claim is clearly allowable for a lack of an argument to the contrary.

Group III - Claim 21

Claim 21 adds to claim 20 the limitation that the amount of the fluorescent material is such that the white optical density is at least 90 percent, among other limitations. This claim stands rejected under 35 U.S.C. §103(a) over the "admitted prior art" in view of Heilman et al., "as evidenced by Krasieva et al. (the '498 patent). The Examiner concedes that the combination of the primary and secondary references fails to disclose or suggest the amount of fluorescent dye present in the backing layer. Not only is there no teaching or suggestion to combine Krasieva et al., this reference is taken from an entirely different common, non-analogous field of art, namely, the fabrication of illuminator elements for conventional light microscopes. As such, what Krasieva et al. has to say about optical density is immaterial. It is well settled that in rejecting claims under 35 U.S.C. §103, the Examiner must provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art, or to combine references, to arrive at Applicant's claimed invention. There must be something *in the prior art* that suggests the proposed modification, other than the hindsight gained from knowledge that the inventor choose to combine these particular things in this particular way. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988). The Examiner is also required to make specific findings on a suggestion to combine prior art references. In Re Dembeczak, 175 F.3d 994, 1000-01, 50 USPQ2d 1614, 1617-19 (Fed. Cir. 1999). In this case, the Examiner's argument that it would have been obvious to meet the limitations of the claim of this group, since the discovery of "optimum or workable ranges involves only routine skill in the art," is without foundation. Whatever optimum or workable ranges might be present in the teachings of Krasieva et al.

simply do not carry over to Applicants' invention, which is directed to an edge-tear apparent adhesive-backed tape.

Group IV - Claim 22

Claim 22 stands rejected under 35 U.S.C. §103(a) over the "admitted prior art" in view of Heilman et al. as evidenced by Yarusso et al. (the '249 patent). Claim 22 adds to claim 20 that the backing material comprises a polymer selected from a group of materials, none of which are disclosed in Heilman et al. To "cure this deficiency," the Examiner attempts to combine the teachings of Yarusso, but again, there is no teaching or suggestion to import the teachings from the '249 patent into the other references cited by the Examiner. Moreover, the use of the materials cited in Yarusso make no sense in the application of Heilman et al., since the point of novelty of the Heilman invention has to do with the realization of a brittle layer, utilizing thermoset and other materials disclosed by Heilman et al. Use of the flexible materials set forth by Applicants in this claim would render Heilman et al. unfit for its intended purpose.

Based upon the foregoing, Applicants believe that all claims continue to be in condition for allowance. Questions regarding this application may be directed to the undersigned attorney at the telephone/facsimile numbers provided.

Respectfully submitted,

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